



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gray Personnel Consultants

File: B-243743

Date: July 8, 1991

Florine H. Gray for the protester.
Lieutenant Colonel William J. Holland, Esq., Department of the Air Force, for the agency.
David Hasfurther, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed with the General Accounting Office more than 10 working days after the protester learned of the denial of its protest to the contracting agency is untimely notwithstanding the fact that the untimely filing was due to incorrect advice given to the protester by the agency regarding the forum in which its protest should be filed.

DECISION

Gray Personnel Consultants protests the allegedly improper manner in which Goodfellow Air Force Base handled its acquisition of Postal Service Center services under request for quotations No. F41614-91-Q-0617. We dismiss the protest.

Three firms submitted quotations by the due date of March 21, 1991. By letter of March 23 to the contracting officer, Gray protested the award. Gray's protest was denied by the contracting officer by letter of March 27. In that letter, the contracting officer also advised Gray that although "[t]he FAR [Federal Acquisition Regulation] provides no other forum to hear . . . [a small purchase] complaint," Gray could appeal the denial to the contracting officer's commanding officer. After Gray did appeal by letter of March 28, the commanding officer by letter of April 10 advised Gray that the contracting officer had been in error in not advising Gray that an appeal of the denial should be made to the General Accounting Office rather than to himself. By letter of April 18 to our Office, received by us on April 23, Gray protested the contracting officer's decision.

Our Bid Protest Regulations require a protester to file its protest with our Office within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action on its agency-level protest, 4 C.F.R. § 21.2(a)(3) (1991). Receipt of a denial of a protest filed with the contracting agency constitutes initial adverse agency action. 4 C.F.R. § 21.0(f). While it is unfortunate that the protester was erroneously advised by the contracting agency regarding to whom an appeal was to be made, we cannot permit another agency to waive in effect our timeliness standards by its erroneous advice. See Rudd Constr. Inc., B-234936, Apr. 10, 1989, 89-1 CPD ¶ 367. Further, since our regulations are published in the Federal Register, protesters are charged as a matter of law with constructive notice of their content. Therefore, protesters are presumed to know of the availability of this bid protest forum and of the rules applicable thereto. The lack of actual knowledge will not convert an untimely protest into a timely one. Air Cleaning Specialists, Inc.--Recon., B-236936.2, Nov. 3, 1989, 89-2 CPD ¶ 422.

It is clear from the fact that Gray appealed the contracting officer's denial by letter of March 28 that Gray had received the denial by that date. Since Gray's protest to our Office was not received by us until April 23, more than 10 working days after Gray's receipt of the contracting officer's denial, the protest to our Office was untimely.

Michael R. Golden

Michael R. Golden
Assistant General Counsel